



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2012-N050]

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Proposed Low-Effect Habitat Conservation Plan for the Bay Checkerspot Butterfly and Serpentine Grasslands, City of San Jose, Santa Clara County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: request for comment.

SUMMARY: We, the U. S. Fish and Wildlife Service, have received an application from Hoa Cam Tieu (applicant) for a 3-year incidental take permit for three species under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of one listed animal, the Bay checkerspot butterfly; one listed plant, the Santa Clara Valley dudleya; and one nonlisted plant, the most beautiful jewelflower. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant’s low-effect habitat conservation plan

(Plan). We request comments on the applicant's application and Plan, and the preliminary determination that the Plan qualifies as a "low-effect" habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

DATES: We must receive written comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comment is in reference to the Low-Effect Habitat Conservation Plan for Bay checkerspot butterfly and serpentine grasslands, Santa Clara County California:

- *U.S. Mail:* Ellen McBride, Conservation Planning Branch, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825.
- *In-Person Drop-off, Viewing, or Pickup:* Call (916) 414-6600 to make an appointment during regular business hours to drop off comments or view received comments at this location: the above address.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, Chief, Conservation Planning Division, or Eric Tattersall, Deputy Assistant Field Supervisor, at the address shown above or at (916) 414-6600 (telephone). If you use a telecommunications device

for the deaf, please call the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the permit application, plan, and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background Information

Section 9 of the Act prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harm” is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed

species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized under an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan. All species included in the incidental take permit would receive assurances under our “No Surprises” regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The applicant seeks an incident take permit for covered activities within 1.4 acres of grassland associated with the construction of a single family residence in Santa Clara County, California. The following two federally listed species will be included as covered species in the applicants’ proposed Plan:

- Bay checkerspot butterfly (*Euphydryas editha bayensis*) (threatened)
- Santa Clara Valley dudleya (*Dudleya setchellii*) (endangered)

The Plan does not include any unlisted animal species, but would include one unlisted plant species:

- Most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*)

Collectively, these species are referred to as “covered species” in the Plan. For these covered species, the applicants would seek incidental take authorization.

Covered activities include the following:

- Grading and ground leveling
- Vegetation removal and planting, soil compaction, building construction, and use of heavy equipment (including, but not limited to, bulldozers, cement trucks, water trucks, and backhoes)
- Erosion control structures (such as silt fencing and barriers)
- Dust control (such as watering surface soils)
- Construction of driveways
- Trenching
- Animal husbandry units
- Installation of utilities and irrigation systems
- Landscaping associated with all of the above activities and structures

The applicant proposes to avoid, minimize, and mitigate the effects to the covered species associated with the covered activities by fully implementing the Plan. Minimization measures will include, but are not limited to:

- An employee education program,
- Prior to initial grading, installation of permanent perimeter fencing and signage around the protected serpentine grassland,
- Temporary construction fencing,
- Salvage of individual Santa Clara Valley dudleya prior to construction, and

- A deed restriction or conservation easement on 2.5 acres of the site for protection of serpentine habitat.

General minimization measures will include:

- Limiting staging and work areas to the project site only, or to existing paved roads,
- Removal of all food-related trash every 3 days,
- Prohibiting pets from the project site during construction,
- Restricting ground disturbance to the period of July 1 through November 30 (generally the dry season), unless we authorize otherwise, and
- Maintenance of all equipment to avoid fluid leaks.

The applicant proposes to build a 0.60-acre residential home, which includes the single-family residence, detached garage, landscaped area, underground water line, and driveway. This development will be at the top of the property. There will be an additional septic system and septic leach field area of approximately 0.80 acre slightly west and downslope from the residence. Neither the residence nor the leach field area will directly affect serpentine species, but could result in indirect effects.

Alternatives

Our proposed action is approving the applicant's Plan and issuance of an

incidental take permit for the applicant's covered activities. As required by the Act, the applicant's Plan considers alternatives to the take under the proposed action. The Plan considers the environmental consequences of one alternative to the proposed action, the No Action Alternative. Under the No Action Alternative, we would not issue a permit; the applicant would not build the proposed single-family residence; the project area would continue to experience illegal off-road vehicle use, illegal trash dumping, and trespassing; and no take would occur for the construction of the residence and its associated structures. For these reasons, the No-Action Alternative has been rejected.

Under the Proposed Action Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above. The Proposed Action Alternative would result in permanent loss of 1.40 acres of grassland habitat for the Bay checkerspot butterfly, Santa Clara Valley dudleya, and most beautiful jewelflower. To mitigate for these effects, the applicant proposes to protect, enhance, and manage in perpetuity 2.5 acres of on-site serpentine grassland.

National Environmental Policy Act

As described in our EAS, we have made the preliminary determination that approval of the proposed Plan and issuance of the permit would qualify as a categorical exclusion under NEPA (42 U.S.C. 4321 et seq.), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516

DM 2 and 516 DM 8). Our EAS found that the proposed plan qualifies as a “low-effect” habitat conservation plan, as defined by our Habitat Conservation Planning Handbook (November 1996). Determination of low-effect habitat conservation plans is based on the following three criteria: (1) Implementation of the proposed plan would result in minor or negligible effects on federally-listed, proposed, and candidate species and their habitats; (2) implementation of the proposed plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;

3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the subject area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

Authority

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the Plan, and comments we receive to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the Bay checkerspot butterfly, Santa Clara Valley dudleya, and most beautiful jewelflower

from the implementation of the covered activities described in the Low-Effect Habitat Conservation Plan for the Bay Checkerspot Butterfly and Serpentine Grasslands, City of San Jose, Santa Clara County, California. We will make the final permit decision no sooner than 30 days after the date of this notice.

Dated: April 13, 2012

Susan Moore

**Field Supervisor
Sacramento Fish and Wildlife Office,
Sacramento, California.**

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